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8 **BEFORE THE**  
9 **BOARD OF REGISTERED NURSING**  
10 **DEPARTMENT OF CONSUMER AFFAIRS**  
11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

Case No. *2013-523*

13 **BARR DEKKER BARTON**

Respondent. **STATEMENT OF ISSUES**

14  
15 Complainant alleges:

16 **PARTIES**

17 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Statement of Issues solely  
18 in her official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),  
19 Department of Consumer Affairs.

20 2. On or about November 16, 2011, the Board received an application for a registered  
21 nurse license from Barr Dekker Barton ("Respondent"). On or about December 15, 2011,  
22 Respondent certified under penalty of perjury to the truthfulness of all statements, answers, and  
23 representations in the application. The Board denied the application on March 26, 2012.

24 **STATUTORY PROVISIONS**

25 3. Business and Professions Code ("Code") section 2736 provides, in pertinent part, that  
26 the Board may deny a license when it finds that the applicant has committed any acts constituting  
27 grounds for denial of licensure under section 480 of that Code.

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1           4.     Code section 2761 states, in pertinent part:

2                     The board may take disciplinary action against a certified or licensed  
3                     nurse or deny an application for a certificate or license for any of the following:

4                     (a) Unprofessional conduct . . .

5                     . . . .

6                     (f) Conviction of a felony or of any offense substantially related to the  
7                     qualifications, functions, and duties of a registered nurse, in which event the record of  
8                     the conviction shall be conclusive evidence thereof . . .

8           5.     Code section 2762 states, in pertinent part:

9                     In addition to other acts constituting unprofessional conduct within the  
10                     meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a  
11                     person licensed under this chapter to do any of the following:

11                     . . . .

12                     (b) Use any controlled substance as defined in Division 10 (commencing  
13                     with Section 11000) of the Health and Safety Code, or any dangerous drug or  
14                     dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or  
15                     in a manner dangerous or injurious to himself or herself, any other person, or the  
16                     public or to the extent that such use impairs his or her ability to conduct with safety to  
17                     the public the practice authorized by his or her license.

18                     (c) Be convicted of a criminal offense involving the prescription,  
19                     consumption, or self administration of any of the substances described in subdivisions  
20                     (a) and (b) of this section, or the possession of, or falsification of a record pertaining  
21                     to, the substances described in subdivision (a) of this section, in which event the  
22                     record of the conviction is conclusive evidence thereof . . .

19           6.     Code section 2765 states:

20                     A plea or verdict of guilty or a conviction following a plea of nolo  
21                     contendere made to a charge substantially related to the qualifications, functions and  
22                     duties of a registered nurse is deemed to be a conviction within the meaning of this  
23                     article. The board may order the license or certificate suspended or revoked, or may  
24                     decline to issue a license or certificate, when the time for appeal has elapsed, or the  
25                     judgment of conviction has been affirmed on appeal or when an order granting  
26                     probation is made suspending the imposition of sentence, irrespective of a subsequent  
27                     order under the provisions of Section 1203.4 of the Penal Code allowing such person  
28                     to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside  
                      the verdict of guilty, or dismissing the accusation, information or indictment.

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1           7.       Code section 480 states, in pertinent part:

2                   (a) A board may deny a license regulated by this code on the grounds that  
3                   the applicant has one of the following:

4                   (1) Been convicted of a crime. A conviction within the meaning of this  
5                   section means a plea or verdict of guilty or a conviction following a plea of nolo  
6                   contendere. Any action that a board is permitted to take following the establishment  
7                   of a conviction may be taken when the time for appeal has elapsed, or the judgment  
8                   of conviction has been affirmed on appeal, or when an order granting probation is  
9                   made suspending the imposition of sentence, irrespective of a subsequent order under  
10                  the provisions of Section 1203.4 of the Penal Code.

11                   ....

12                   (3)(A) Done any act that if done by a licentiate of the business or  
13                   profession in question, would be grounds for suspension or revocation of license.

14                   (B) The board may deny a license pursuant to this subdivision only if the  
15                   crime or act is substantially related to the qualifications, functions, or duties of the  
16                   business or profession for which application is made . . .

17                   **FIRST CAUSE FOR DENIAL**

18                   **(Criminal Convictions)**

19           8.       Respondent's application is subject to denial pursuant to Code sections 2736, 2761,  
20           subdivision (f), and 480, subdivisions (a)(1) and (a)(3)(A), in that Respondent was convicted of  
21           crimes which are substantially related to the qualifications, functions, and duties of a registered  
22           nurse, as set forth below.

23           a.       On or about July 6, 2004, in San Joaquin County Superior Court, Case No.  
24           ST037453A, Respondent pled nolo contendere to violating Vehicle Code section 23152,  
25           subdivision (b) (driving while having a .08 percent or higher blood alcohol), a misdemeanor. The  
26           imposition of Respondent's sentence was suspended and Respondent was placed on probation for  
27           3 years on terms and conditions, including that Respondent obey all laws. The circumstances of  
28           the crime are as follows: On or about May 31, 2004, officers with the Stockton Police  
Department conducted a traffic stop on Respondent's vehicle as Respondent was speeding and  
driving without his lights on. One of the officers approached the vehicle and contacted  
Respondent. The officer noted that Respondent's eyes were watery and that there was a strong  
odor of an alcoholic beverage emitting from the vehicle. The officer asked Respondent to step  
outside the vehicle. Respondent stared at the officer, but did not move. The officer opened the

1 driver's door and Respondent fell out of the vehicle. The officer and his partner held Respondent  
2 up to prevent him from falling and placed him in the back of their patrol car. The officer asked  
3 Respondent if he had been drinking. Respondent stated that he "had a few". The officer did not  
4 administer any field sobriety tests because Respondent could not stand up on his own. Based on  
5 Respondent's objective symptoms of impairment and admission of drinking alcohol, the officer  
6 arrested Respondent for DUI. The officer and his partner performed an inventory search of the  
7 vehicle and located a 750 ml bottle of Wild Turkey bourbon whiskey. The bottle had been  
8 opened and was three quarters full. The officers took Respondent to the hospital where he had his  
9 blood drawn. The laboratory results showed that Respondent had a BAC of 0.25 percent.

10 b. On or about December 9, 2005, in El Dorado County Superior Court, Case No.  
11 P05CRM1832, Respondent pled nolo contendere to violating Penal Code section 148, subdivision  
12 (a)(1) (resisting, obstructing, or delaying a peace officer or EMT), a misdemeanor. Respondent  
13 also pled nolo contendere to violating Penal Code section 647, subdivision (f) (public intoxication  
14 [liquor]), but that charge was dismissed on March 10, 2006. The circumstances of the crime(s)  
15 are as follows: On or about August 27, 2005, an officer with the Placerville Police Department  
16 ("PPD") responded to 873 Cottage Street regarding a possible man down. PPD dispatch advised  
17 the officer that a male subject was unconscious and in the reporting party's driveway. Upon  
18 arrival, the officer observed Respondent lying in the driveway (he appeared to be sleeping). The  
19 officer contacted Respondent and had him sit up. The officer could smell the odor of an alcoholic  
20 beverage about Respondent's person and his eyes were red and watery. The officer asked  
21 Respondent if he knew where he was. Respondent appeared confused and did not answer.  
22 Respondent attempted to stand up, but the officer ordered him to stay seated and placed him in a  
23 seated position. Respondent attempted to stand up again. The officer placed Respondent in a  
24 seated position and ordered him to stay seated. Respondent refused, attempted to stand up a third  
25 time, and pushed away from the officer. The officer forced Respondent onto his stomach and had  
26 him on the ground while another officer grabbed Respondent's right hand and placed it into a  
27 control hold. The first officer grabbed Respondent's left arm which was under his body and  
28 attempted to pull it out. Respondent refused to pull his arm out from under his body despite the

1 officer's repeated orders to comply. The officer placed his Taser to the back of Respondent's  
2 neck and ordered him to remove his arm or the officer would use his Taser. Respondent refused.  
3 The officer deployed his Taser and Respondent released his arm. Respondent was then taken into  
4 custody. The above incident occurred while Respondent was on probation for his conviction of  
5 July 6, 2004.

## 6 **SECOND CAUSE FOR DENIAL**

### 7 **(Use of Alcoholic Beverages to an Extent or in a Manner**

### 8 **Dangerous or Injurious to Oneself, Others, and the Public)**

9 9. Respondent's application is subject to denial pursuant to Code sections 2736, 2761,  
10 subdivision (a), 2762, subdivision (b), and 480, subdivision (a)(3)(A), in that on or about May 31,  
11 2004, and August 27, 2005, Respondent consumed alcoholic beverages to an extent or in a  
12 manner dangerous or injurious to himself, others, and/or the public, as set forth in paragraph 8  
13 above.

## 14 **THIRD CAUSE FOR DENIAL**

### 15 **(Conviction Related to the Consumption of Alcoholic Beverages)**

16 10. Respondent's application is subject to denial pursuant to Code sections 2736, 2761,  
17 subdivision (a), 2762, subdivision (c), and 480, subdivision (a)(3)(A), in that on or about July 6,  
18 2004, Respondent was convicted of a criminal offense involving the consumption of alcoholic  
19 beverages, as set forth in subparagraph 8 (a) above.

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**PRAYER**

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Barr Dekker Barton for a registered nurse license;
2. Taking such other and further action as deemed necessary and proper.

DATED: December 24, 2012

Louise R. Bailey  
LOUISE R. BAILEY, M.ED., RN  
Executive Officer  
Board of Registered Nursing  
Department of Consumer Affairs  
State of California  
Complainant

SA2012106415